

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:04-CR-00272-RJC-CH

USA)
)
v.) ORDER
)
EUGENE HARDESTY)
)

THIS MATTER is before the Court upon motion of the defendant pro se for a reduction of sentence based on retroactive amendments to the United States Sentencing Guidelines regarding to drug offenses, (Doc. No. 70), counsel's Notice of Ineligibility, (Doc. No. 71), and related pleadings.

The offense level for the defendant's drug offense was determined pursuant to the career offender guideline. (Doc. No. 72: Supplemental Presentence Report at 1). The career offender guideline sets the offense level in relation to the maximum statutory penalty, USSG §4B1.1(b), and was not affected by the 2014 amendments, USSG Supp. to Appx. C., Amend. 782 (2014). Accordingly, the defendant is not eligible for a sentence reduction. United States v. Avent, 633 Fed. Appx. 176 (4th Cir. 2016) (Amendment 782 not applicable to sentences derived from career offender guideline); USSG §1B1.10 comment. (n.1(A)(ii)) (defendant not eligible for reduction where another guideline provision prevents lowering of guideline range); Neal v. United States, 516 U.S. 284, 296 (1996) (retroactive amendment to guidelines does not alter statutory mandatory minimum).

IT IS, THEREFORE, ORDERED that the defendant's motion, (Doc. No. 70), is **DENIED**.

The Clerk is directed to certify copies of this order to the defendant, the Community Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: June 6, 2016



Robert J. Conrad, Jr.
United States District Judge

